

E-Filing

[Counsel listed on last page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Lextron Systems, Inc.

Plaintiff,

vs.

Microsoft Corporation

Defendant.

Case No. CV 04-00588-VRW

STIPULATED PROTECTIVE ORDER

1 1. **PURPOSES AND LIMITATIONS.** Disclosure and discovery activity in this
2 action are likely to involve production of confidential, proprietary, or private information for
3 which special protection from public disclosure and from use for any purpose other than
4 prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and
5 petition the court to enter the following Stipulated Protective Order. The parties acknowledge
6 that this Order does not confer blanket protections on all disclosures or responses to discovery
7 and that the protection it affords extends only to the limited information or items that are entitled
8 under the applicable legal principles to treatment as confidential. The parties further –
9 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
10 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the
11 procedures that must be followed and reflects the standards that will be applied when a party
12 seeks permission from the court to file material under seal.

13 2. **DEFINITIONS.**

14 2.1 **PARTY:** any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and OUTSIDE COUNSEL (and their support staff).

16 2.2 **DISCLOSURE or DISCOVERY MATERIAL:** all items or information,
17 regardless of the medium or manner generated, stored, or maintained (including, among other
18 things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or
19 responses to discovery in this matter.

20 2.3 **“CONFIDENTIAL” information or items:** information (regardless of how
21 generated, stored or maintained) or tangible things that qualify for protection under standards
22 developed under Fed. R. Civ. P. 26(c).

23 2.4 **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or**
24 **Items:** extremely sensitive “CONFIDENTIAL” information or items whose disclosure to
25 another PARTY or non-party would create a substantial risk of serious injury that could not be
26 avoided by less restrictive means.

27 2.5 **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE**
28 **CODE”:** any material that constitutes or contains non-public source code of the designating
party’s software or computer applications.

 2.6 **RECEIVING PARTY:** a PARTY that receives DISCLOSURE or DISCOVERY
MATERIAL from a PRODUCING PARTY.

1 2.7 PRODUCING PARTY: a PARTY or non-party that produces disclosure OR
2 DISCOVERY MATERIAL in this action.

3 2.8 DESIGNATING PARTY: a PARTY or non-party that designates information or
4 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL,"
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL
6 – ATTORNEYS' EYES ONLY – SOURCE CODE."

7 2.9 PROTECTED MATERIAL: any DISCLOSURE or DISCOVERY MATERIAL
8 that is designated as "CONFIDENTIAL," as "HIGHLY CONFIDENTIAL – ATTORNEYS'
9 EYES ONLY," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY–SOURCE
10 CODE."

11 2.10 OUTSIDE COUNSEL: attorneys who are not employees of a PARTY but who
12 are retained to represent or advise a PARTY in this action. This definition includes professional
13 jury or trial consultants retained in connection with this litigation.

14 2.11 HOUSE COUNSEL: attorneys who are employees of a PARTY.

15 2.12 COUNSEL (without qualifier): OUTSIDE COUNSEL and HOUSE COUNSEL
16 (as well as their support staffs).

17 2.13 EXPERT: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a PARTY or its COUNSEL to serve as an
19 expert witness or as a consultant in this action and who is not a past or a current employee of a
20 PARTY or of a PARTY'S competitor and who, at the time of retention, is not anticipated to
21 become an employee of a PARTY or a PARTY'S competitor.

22 2.14 PROFESSIONAL VENDORS: persons or entities that provide litigation support
23 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
24 organizing, scanning, storing, retrieving data in any form or medium; etc.) and their employees
25 and subcontractors.

26 3. SCOPE. The protections conferred by this Stipulation and Order cover not only
27 PROTECTED MATERIAL (as defined above), but also any information copied or extracted
28 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
conversations, or presentations by PARTIES or COUNSEL to or in court or in other settings that
might reveal PROTECTED MATERIAL.

1 4. DURATION. Even after the termination of this litigation, the confidentiality
2 obligations imposed by this Order shall remain in effect until a DESIGNATING PARTY agrees
3 otherwise in writing or a court order otherwise directs.

4 5. DESIGNATING PROTECTED MATERIAL.

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
6 PARTY or non-party that designates information or items for protection under this Order must
7 take care to limit any such designation to specific material that qualifies under the appropriate
8 standards developed under Fed. R. Civ. P. 26(c). A DESIGNATING PARTY must take care to
9 designate in good faith for protection only those parts of material, documents items, or oral or
10 written communications that qualify – so that other portions of the material, documents, items, or
11 communications for which protection is not warranted are not swept unjustifiably within the
12 ambit of this Order. Mass, indiscriminate, or routine designations are prohibited. Designations
13 that are shown to be clearly unjustified, not made in good faith, or that have been made for an
14 improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to
15 impose unnecessary expenses and burdens on other parties), expose the DESIGNATING
16 PARTY to sanctions. If it comes to a PARTY'S or a non-party's attention that information or
17 items that it designated for protection do not qualify for protection at all, or do not qualify for the
18 level of protection initially asserted, that PARTY or non-party must promptly notify all other
19 parties that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
21 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
22 material that qualifies for protection under this Order must be clearly so designated before the
23 material is disclosed or produced. Designation in conformity with this Order requires:

24 (a) for information in documentary form (apart from transcripts of depositions or
25 other pretrial or trial proceedings), that the PRODUCING PARTY affix the legend
26 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE" at the top or
28 bottom of each page that contains PROTECTED MATERIAL. If only a portion or portions of
the material on a page qualifies for protection, the PRODUCING PARTY also must clearly
identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL,"

1 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL
2 – ATTORNEYS' EYES ONLY – SOURCE CODE").

3 A PARTY or non-party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting PARTY has indicated
5 which material it would like copied and produced. During the inspection and before the
6 designation, all of the material made available for inspection shall be deemed "HIGHLY
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
8 ATTORNEYS' EYES ONLY – SOURCE CODE." After the inspecting PARTY has identified
9 the documents it wants copied and produced, the PRODUCING PARTY must determine which
10 documents, or portions thereof, qualify for protection under this Order, then, before producing
11 the specified documents, the PRODUCING PARTY must affix the appropriate legend
12 ("CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY SOURCE CODE" at the top or
14 bottom of each page that contains PROTECTED MATERIAL. If only a portion or portions of
15 the material on a page qualifies for protection, the PRODUCING PARTY also must clearly
16 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
17 specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL,"
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL
19 – ATTORNEYS' EYES ONLY – SOURCE CODE").

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
21 PARTY or non-party offering or sponsoring the testimony identify all protected testimony on the
22 record, before the close of the deposition, hearing, or other proceeding, and further specify any
23 portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
24 ONLY," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES – ONLY SOURCE CODE."
25 When it is impractical to identify separately each portion of testimony that is entitled to
26 protection, and when it appears that substantial portions of the testimony may qualify for
27 protection, the PARTY or non-party that sponsors, offers, or gives the testimony may invoke on
28 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to
identify the specific portions of the testimony as to which protection is sought and to specify the
level of protection being asserted ("CONFIDENTIAL," "HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

1 – SOURCE CODE”). Only those portions of the testimony that are appropriately designated for
2 protection within the 20 days shall be covered by the provisions of this Stipulated Protective
3 Order.

4 Transcript pages containing PROTECTED MATERIAL must be separately bound by, the
5 court reporter, who must affix to the top or bottom of each such page the legend
6 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
7 “HIGHLY CONFIDENTIAL–ATTORNEYS’ EYES ONLY SOURCE CODE” as instructed by
8 the PARTY or non-party offering or sponsoring the witness or presenting the testimony.

9 (c) for information produced in some form other than documentary, and for any other
10 tangible items, that the PRODUCING PARTY affix in a prominent place on the exterior of the
11 container or containers in which the information or item is stored the legend
12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE.” If only
14 portions of the information or item warrant protection, the PRODUCING PARTY, to the extent
15 practicable, shall identify the protected portions, specifying whether they qualify as
16 “CONFIDENTIAL,” as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE.”

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
19 designate qualified information or items as “CONFIDENTIAL,” as “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY – SOURCE CODE” does not, standing alone, waive the
22 DESIGNATING PARTY’S right to secure protection under this Order for such material. If
23 material is appropriately designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
25 – SOURCE CODE” after the material was initially produced, the RECEIVING PARTY, on
26 timely notification of the designation, must make reasonable efforts to assure that the material is
27 treated in accordance with the provisions of this Order.

28 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.

6.1 Timing of Challenges. Unless a prompt challenge to a DESIGNATING
PARTY’S confidentiality designation is necessary to avoid foreseeable substantial unfairness,
unnecessary economic burdens, or a later significant disruption or delay of the litigation, a

1 PARTY does not waive its right to challenge a confidentiality designation by electing not to
2 mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A PARTY that elects to initiate a challenge to a
4 DESIGNATING PARTY'S confidentiality designation must do so in good faith and must begin
5 the process by conferring directly (in voice to voice dialogue; other forms of communication are
6 not sufficient) with counsel for the DESIGNATING PARTY. In conferring, the challenging
7 PARTY must explain the basis for its belief that the confidentiality designation was not proper
8 and must give the DESIGNATING PARTY an opportunity to review the designated material, to
9 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for
10 the chosen designation. A challenging PARTY may proceed to the next stage of the challenge
11 process only if it has engaged in this meet and confer process first.

12 6.3 Judicial Intervention. A PARTY that elects to challenge a confidentiality
13 designation after considering the justification offered by the DESIGNATING PARTY may file
14 and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
15 applicable) that identifies the challenged material and sets forth in detail the basis for the
16 challenge. Each such motion must be accomplished by a competent declaration that affirms that
17 the movement has complied with the meet and confer requirements imposed in the preceding
18 paragraph and that sets forth with specificity the justification for the confidentiality designation
19 that was given by the DESIGNATING PARTY in the meet and confer dialogue. The burden of
20 persuasion in any such challenge proceeding shall be on the DESIGNATING PARTY. Until the
21 court rules on the challenge, all parties shall continue to afford the material in question the level
22 of protection to which it is entitled under the PRODUCING PARTY'S designation.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL.

24 7.1 Basic Principles. A RECEIVING PARTY may use PROTECTED MATERIAL
25 that is disclosed or produced by another PARTY or by a non-party in connection with this case
26 only for prosecuting, defending, or attempting to settle this litigation. Such PROTECTED
27 MATERIAL may be disclosed only to the categories of persons and under the conditions
28 described in this Order. When the litigation has been terminated, a RECEIVING PARTY must
comply with the provisions of section 11, below (FINAL DISPOSITION).

PROTECTED MATERIAL must be stored and maintained by a RECEIVING PARTY at
a location and in a secure manner that limits access to the persons authorized under this Order.

1 Storage and maintenance of CONFIDENTIAL information or materials by the recipient in the
2 same manner as it stores and maintains its own confidential and proprietary information shall be
3 deemed sufficient.

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the DESIGNATING PARTY a RECEIVING
6 PARTY may disclose any information or item designated CONFIDENTIAL only to:

7 (a) the RECEIVING PARTY'S OUTSIDE COUNSEL of record in this action, as
8 well as employees of said COUNSEL to whom it is reasonably necessary to disclose the
9 information for this litigation;

10 (b) the officers, directors, and employees (including HOUSE COUNSEL) of the
11 RECEIVING PARTY to whom disclosure is reasonably necessary for this litigation;

12 (c) EXPERTS of the RECEIVING PARTY to whom disclosure is reasonably
13 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
14 Order" (Exhibit A);

15 (d) the Court and its personnel;

16 (e) court reporters, their staffs, and PROFESSIONAL VENDORS to whom
17 disclosure is reasonably necessary for this litigation;

18 (f) trial or deposition witnesses in the action to whom disclosure is reasonably
19 necessary for purposes of this litigation, and the party who intends to show the PROTECTED
20 MATERIAL to the witness provides the DESIGNATING PARTY with at least 7 days notice of
21 the intent to show the PROTECTED MATERIAL to the witness, and provides the
22 DESIGNATING PARTY with the opportunity to object pursuant to Section 7.4. The party
23 showing the deposition or trial witness the PROTECTED MATERIAL will also ensure that the
24 witness has signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

25 (g) members of the jury subject to such controls as may be requested by the
26 DESIGNATING PARTY and ordered by the Court at the time of trial; and

27 (h) the author and any original recipient of the document.

28 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
Information or Items. Unless otherwise ordered by the court or permitted in writing by the
DESIGNATING PARTY, a RECEIVING PARTY may disclose any information or item
designated "HIGHLY CONFIDENTIAL–ATTORNEYS' EYES ONLY" only to:

1 (a) the RECEIVING PARTY'S OUTSIDE COUNSEL of record in this action, as
2 well as employees of said COUNSEL to whom it is reasonably necessary to disclose the
3 information for this litigation;

4 (b) HOUSE COUNSEL of a RECEIVING PARTY (1) who has no involvement in
5 competitive decision-making or in patent prosecutions involving Internet technologies, (2) to
6 whom disclosure is reasonably necessary for this litigation, and (3) who has signed the
"Agreement to Be Bound by Protective Order" (Exhibit A);

7 (c) EXPERTS (as defined in this Order), pursuant to the procedures outlined in
8 Section 7.4, (1) to whom disclosure is reasonably necessary for this litigation, (2) who have
9 signed the "Agreement to Be Bound by Protective Order";

10 (d) the Court and its personnel;

11 (e) court reporters, their staffs, and PROFESSIONAL VENDORS to whom
disclosure is reasonably necessary for this litigation;

12 (f) members of the jury subject to such controls as may be requested by the
13 DESIGNATING PARTY and ordered by the Court at the time of trial; and

14 (g) the author and any original recipient of the document.

15 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY" Information or Items to "EXPERTS" Pursuant to Section 7.3(c)
17 or Approving Disclosure of "CONFIDENTIAL" Information or Items to Witnesses Pursuant to
18 Section 7.2(f).

19 (a) Unless otherwise ordered by the court or agreed in writing by the
DESIGNATING PARTY, a PARTY that seeks to disclose to an EXPERT any information or
20 item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
21 first must make a written request to the DESIGNATING PARTY that (1) sets forth the full name
22 of the EXPERT and the city and state of his or her primary residence, (2) attaches a copy of the
23 EXPERT'S current resume, (3) identifies the EXPERT'S current employer(s), (4) identifies each
24 person or entity from whom the EXPERT has provided professional services at anytime during
25 the preceding four years, and (5) identifies (by name and number of the case, filing date, and
26 location of court) any litigation in connection with which the EXPERT has provided any
27 professional services during the preceding four years. PARTY may seek to disclose to a trial or
28 deposition witness any CONFIDENTIAL information or material in the action only where it is

1 reasonably necessary for purposes of the litigation, and that PARTY must first make a written
2 request to the DESIGNATING PARTY that (1) sets forth the full name of the witness and the
3 city and state of his or her primary residence, and (2) identifies the witness' current employer
4 and occupation. Microsoft has agreed to allow Mr. Ryan M. Sullivan and his firm of Bates,
5 White, L.L.C. access to material that has been designated "CONFIDENTIAL" and "HIGHLY
6 CONFIDENTIAL-ATTORNEYS' EYES ONLY" for the sole purpose of this litigation as
7 EXPERTS of Lextron pursuant to the terms of this protective order.

8 (b) A PARTY that makes a request and provides the information specified in the
9 preceding paragraph may disclose PROTECTED MATERIAL to the identified EXPERT or
10 witness no earlier than eight court days after delivering such a request, unless, within seven court
11 days of delivering the request, the PARTY receives a written objection from the
12 DESIGNATING PARTY. Any such objection must set forth in detail the grounds on which it is
13 based.

14 (c) A PARTY that receives a timely written objection must meet and confer with the
15 DESIGNATING PARTY (through direct voice to voice dialogue) to try to resolve the matter by
16 agreement. If no agreement is reached, the PARTY seeking to make the disclosure to the
17 EXPERT or witness may file a motion as provided Civil Local Rule 7 (and in compliance with
18 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
19 motion must describe the circumstances with specificity, set forth in detail the reasons for which
20 the disclosure to the EXPERT or witness is reasonably necessary, assess the risk of harm that the
21 disclosure would entail and suggest any additional means that might be used to reduce that risk.
22 In addition, any such motion must be accompanied by a competent declaration in which the
23 movant describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the
24 content of the meet and confer discussions) and sets forth the reasons advanced by the
25 DESIGNATING PARTY for its refusal to approve the disclosure.

26 In any such proceeding, the PARTY opposing disclosure to the EXPERT or witness shall
27 bear the burden of proving that the risk of harm that the disclosure would entail (under the
28 safeguards proposed) outweighs the RECEIVING PARTY'S need to disclose the PROTECTED
MATERIAL to its EXPERT or witness.

7.5 Treatment of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY -
SOURCE CODE" Information or Items. Access to material designated HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE and to any portion of any
2 transcript or other paper that contains, reveals or refers to material so designated will be treated
3 with at least the same level of confidentiality as material designated HIGHLY CONFIDENTIAL
4 – ATTORNEYS’ EYES ONLY, and will be subject to additional restrictions, set forth below.
5 Nothing in this paragraph shall obligate the parties to produce any source code nor act as an
6 admission that any particular source code is discoverable. Lextron has represented that it has
7 possession of no relevant source code and intends to produce no source code. Accordingly, the
8 provisions of this section shall apply to the source code Microsoft has produced to date in this
9 case (Documents Bates Nos. MS-S 00001-00965) and as to which Microsoft has agreed to allow
10 Mr. Karl Ginter to access for the sole purpose of consulting to Lextron’s outside counsel in this
11 matter and as an EXPERT of Lextron. The Parties agree that Microsoft remains free to seek
12 additional restrictions related to the safekeeping and reproduction of its source code should
13 additional Microsoft source code become subject to discovery or if any Microsoft source code is
14 sought in electronic form. The parties further agree that Lextron remains free to oppose any such
15 additional restrictions.

14 (i) Lextron’s outside counsel and Mr. Ginter agree to maintain the produced
15 Microsoft source code in locked file cabinets either in the offices of outside counsel or in Mr.
16 Ginter’s offices. Counsel and Mr. Ginter further agree that the produced source code shall not be
17 reviewed or accessed for any purpose other than this case, which expressly excludes reviewing
18 the produced source code in conjunction with any other consulting engagement, for research
19 purposes, or for purposes of any other pending or potential litigation.

20 (b) To the extent that partial copies of any of the produced source code files are
21 deemed necessary by Lextron’s outside counsel or Mr. Ginter for purposes of studying the
22 produced source code, counsel and Mr. Ginter agree to make such copies on yellow paper,
23 ensuring that the HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY label remains
24 visible on every page copied. Mr. Ginter agrees not to make any complete copies of any of the
25 produced Microsoft source code files. To the extent that Lextron’s outside counsel deems it
26 necessary to make complete copies of any of the produced Microsoft source code files, counsel
27 agrees to make such copies on yellow paper, ensuring that the HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY label remains visible on every page.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION. If a RECEIVING PARTY is served with a subpoena or an order issued
3 in other litigation that would compel disclosure of any information or items designated in this
4 action as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
5 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE" the
6 RECEIVING PARTY must so notify the DESIGNATING PARTY, in writing (by fax, if
7 possible) immediately and in no event more than seven (7) court days after receiving the
8 subpoena or order. Such notification must include a copy of the subpoena or court order.

9 The RECEIVING PARTY also must immediately and in no even more than seven (7)
10 court days after receiving the subpoena or order inform in writing the PARTY who caused the
11 subpoena or order to issue in the other litigation that some or all the material covered by the
12 subpoena or order is the subject of this Protective Order. In addition, the RECEIVING PARTY
13 must deliver a copy of this Stipulated Protective Order promptly to the party in the other action
14 that caused the subpoena or order to issue.

15 The purpose of imposing these duties is to alert the interested parties to the existence of
16 this Protective Order and to afford the DESIGNATING PARTY in this case an opportunity to try
17 to protect its confidentiality interests in the court from which the subpoena or order issued. The
18 DESIGNATING PARTY shall bear the burdens and the expenses of seeking protection in that
19 court of its confidential material – and nothing in these provisions should be construed as
20 authorizing or encouraging a RECEIVING PARTY in this action to disobey a lawful directive
21 from another court.

22 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If a
23 RECEIVING PARTY learns that, by inadvertence or otherwise, it has disclosed PROTECTED
24 MATERIAL to any person or in any circumstance not authorized under this Stipulated Protective
25 Order, the RECEIVING PARTY must immediately (a) notify in writing the DESIGNATING
26 PARTY of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
27 PROTECTED MATERIAL, (c) inform the person or persons to whom unauthorized disclosures
28 were made of all the terms of this Order, and (d) request such person or persons to execute the
"Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

10. FILING PROTECTED MATERIAL. Without written permission from the
DESIGNATING PARTY or a court order secured after appropriate notice to all interested

1 persons, a PARTY may not file in the public record in this action any PROTECTED
2 MATERIAL. A PARTY that seeks to file under seal any PROTECTED MATERIAL must
3 comply with Civil Local Rule 79-5.

4 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
5 PRODUCING PARTY, within sixty days after the final termination of this action (including all
6 appeals), each RECEIVING PARTY must return all PROTECTED MATERIAL to the
7 PRODUCING PARTY. With permission in writing from the DESIGNATING PARTY, the
8 RECEIVING PARTY may destroy some or all of the PROTECTED MATERIAL instead of
9 returning it. Whether the PROTECTED MATERIAL is returned or destroyed, the RECEIVING
10 PARTY must submit a written certification to the PRODUCING PARTY (and, if not the same
11 person or entity, to the DESIGNATING PARTY) by the sixty day deadline which states that all
12 the PROTECTED MATERIAL that was returned or destroyed and that affirms that the
13 RECEIVING PARTY has not retained any copies, abstracts, compilations, summaries or other
14 forms of reproducing or capturing any of the PROTECTED MATERIAL. Notwithstanding this
15 provision, COUNSEL are entitled to retain an archival copy of all pleadings, motion papers,
16 transcripts, legal memoranda, correspondence or attorney work product, even if such materials
17 contain PROTECTED MATERIAL. Any such archival copies that contain or constitute
18 PROTECTED MATERIAL remain subject to this Protective Order as set forth in Section 4
19 (DURATION), above.

20 12. MISCELLANEOUS.

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
22 seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
24 Order no PARTY waives any right it otherwise would have to object to disclosing or producing
25 any information or item on any ground not addressed in this Stipulated Protective Order.
26 Similarly, no PARTY waives any right to object on any ground to use in evidence of any of the
27 material covered by this Protective Order, including any waiver of any objection that may be
28 raised as to the admissibility at trial of any evidentiary materials, materials subject to the work
product doctrine or materials which are otherwise beyond the scope of permissible discovery.

12.3 If information subject to a claim of attorney-client privilege or work-product
immunity is inadvertently produced, such production shall in no way prejudice or otherwise

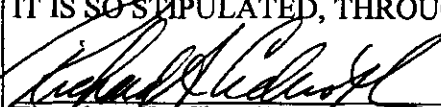
1 constitute a waiver of, or estoppel as to, any claim of privilege or work product immunity for
2 such information. If a party has inadvertently produced material subject to a claim of immunity
3 or privilege, then promptly following that party's written request identifying the material for
4 which a claim of inadvertent production is made, that material shall be returned and all copies or
5 reproductions of that material that may have been made shall be destroyed. No information
6 learned from inadvertently produced material may be used for any purpose. The party returning
7 such information may move the Court for an Order compelling production of such information,
8 but the motion shall not assert as a ground for production the fact or circumstances of the
9 inadvertent production.

10 12.4 Nothing in this Order shall be construed to prevent a designating party from
11 seeking such further provisions regarding confidentiality as may be appropriate.


12 12.5 The designation or non-designation of any material under this Protective Order
13 shall not be admissible as evidence in any litigation for any purpose.

14 12.6 Drafts, whether written or electronic, of expert reports for either party shall not be
15 subject to discovery in this case.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.


17 
18 Theodore W. Chandler (SBN 219436)
19 SIDLEY AUSTIN BROWN & WOOD LLP
20 555 California Street
21 San Francisco, California 94104-1715
22 Telephone: (415) 772-1200
23 Facsimile: (415) 397-4621

24 David T. Pritikin (admitted *pro hac vice*)
25 Richard A. Cederth (admitted *pro hac vice*)
26 Douglas I. Lewis (admitted *pro hac vice*)
27 SIDLEY AUSTIN BROWN & WOOD LLP
28 Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
Attorneys For Defendant


Richard J. Warburg, Bar No. 155223
FOLEY & LARDNER LLP
11250 El Camino Real, Suite 200
San Diego, CA 92130
P.O. Box 80278
San Diego, California 92138-0278
Telephone: (858) 847-6700
Facsimile: (858) 792-6773
Attorneys For Plaintiff

SO ORDERED:

DATED: _____, 2005.


The Honorable Vaughn R. Walker
United States District Judge

Richard J. Warburg, Bar No. 155223
FOLEY & LARDNER LLP
11250 El Camino Real, Suite 200
San Diego, CA 92130
P.O. Box 80278
San Diego, California 92138-0278
Telephone: (858) 847-6700
Facsimile: (858) 792-6773
Attorneys For Plaintiff

David T. Pritikin (admitted *pro hac vice*)
Richard A. Cederoth (admitted *pro hac vice*)
Douglas I. Lewis (*pro hac vice* application pending)
SIDLEY AUSTIN BROWN & WOOD LLP
10 South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
Attorneys For Defendant

Isabella E. Fu (SBN 154677)
MICROSOFT CORPORATION
One Microsoft Way
Redmond, Washington 98052-6399
Telephone: (425) 722-4846
Facsimile: (425) 869-1327

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Lextron Systems, Inc.

Plaintiff,

vs.

Microsoft Corporation

Defendant.

Case No. CV 04-00588-VRW

**EXHIBIT A (AGREEMENT TO BE
BOUND BY PROTECTIVE ORDER)
TO PROTECTIVE ORDER
REGARDING
DISCLOSURE OF CONFIDENTIAL
MATERIALS**

I, _____, state the following:

1. I have read and understood the Protective Order ("Order") to which this Exhibit A is annexed (and whose definitions are incorporated herein), and I attest to my understanding that access to material designated as PROTECTED MATERIAL, including CONFIDENTIAL, HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY, or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE, may be provided to me pursuant to the terms and restrictions of the Order. I agree to be bound by the terms of the Order, both with respect to

1 this Court's powers of supervision of the litigation and contractually to any DESIGNATING
2 PARTY, which I acknowledge to be an expressly intended beneficiary of the undertaking I give
3 in this Agreement To Be Bound By Protective Order.

4 2. I shall not use or disclose to others, except in accordance with the Protective
5 Order, any material that is designated as PROTECTED MATERIAL, including
6 CONFIDENTIAL, HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY, or HIGHLY
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE. If I fail to abide by the
8 terms of this Agreement To Be Bound By Protective Order, or the Protective Order, I understand
9 that I may be subject to sanctions by way of contempt of court or to separate legal or equitable
10 recourse by the adversely affected DESIGNATING PARTY.

11 Dated: _____

Signature

Printed Name

Address